

ORDINANCE NO. 3611

BILL NO. 115 (2008)

A BILL FOR AN ORDINANCE AMENDING TITLE 19,
MAUI COUNTY CODE, RELATING TO ZONING AS IT PERTAINS TO
BED AND BREAKFAST HOMES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 19.04.040, Maui County Code, is amended by amending the definitions of "bed and breakfast home" and "transient vacation rentals or use", respectively, to read as follows:

"Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than [thirty] one hundred eighty days, in [a] no more than two detached single-family dwelling [unit] units, one of which is occupied by the owner-proprietor [or lessee-proprietor]. [The] Each bed and breakfast home shall include bedrooms, one kitchen, and living areas [used by the family occupying the home] and shall include no more than six bedrooms for short-term rental, as specified within the zoning district provisions of this title."

"Transient vacation rentals or use" means occupancy of a dwelling or lodging unit by transients for any period of less than one hundred eighty days[.], excluding bed and breakfast homes."

SECTION 2. Section 19.29.030, Maui County Code, is amended by amending subsection B to read as follows:

"B. Accessory Uses.

1. Accessory uses such as garages, carports, barns, greenhouses, gardening sheds, and similar structures [which] that are customarily used in conjunction with and incidental and subordinate to a principal use or structure;

2. The keeping of livestock, hogs, poultry, and fowl and game birds;

3. One accessory dwelling per lot, in accordance with the provisions of chapter 19.35[, Maui County Code] of this code;

4. Small-scale energy systems[, which] that are incidental and subordinate to principal uses; [and]

5. Stands for the purpose of displaying and selling agricultural, floriculture or farming products, if such products have been produced or grown on the premises, subject to standards in section 19.29.020[, Maui County Code] of this code. Goods produced off-premises are expressly prohibited [.] ; and

6. Bed and breakfast homes, subject to chapter 19.64 of this code."

SECTION 3. Section 19.30A.050, Maui County Code, is amended by amending subsection B to read as follows:

"B. Accessory Uses. Uses [which] that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax

forms and federal [Schedule] form 1040
schedule F [forms] filings;

b. Provide certification by the [Maui
board] department of water supply that
agricultural water rates are being paid if
the subject lot is served by the County
water system; or

c. Provide a farm plan that
demonstrates the feasibility of commercial
agricultural production.

On the islands of Moloka'i and Lana'i, the
owner or lessee of the lot shall meet both of the
criteria provided by subsections 19.30A.050.B.2.a
and 19.30A.050.B.2.b;

3. One agricultural products stand per
lot, for the purpose of displaying and selling
agricultural products grown and processed on the
premises or grown in the County, provided that
said stand shall not exceed three hundred square
feet, shall be set back at least fifteen feet
from roadways, shall have a wall area [which]
that is at least fifty percent open, and shall
meet the off-street parking requirements for
roadside stands provided by section 19.36.010[,
Maui County Code] of this code, except that paved
parking shall not be required; stands [which]
that display or sell agricultural products
[which] that are not grown on the premises shall
be required to obtain a special permit pursuant
to chapter 205, Hawai'i Revised Statutes;

4. Farmer's markets, for the growers and
producers of agricultural products to display and
sell agricultural products grown and processed in
the County; structures shall have a wall area
[which] that is at least fifty percent open;
markets shall operate only during daylight hours
and shall not operate on parcels less than ten
acres; the director of public works [and waste
management] may impose additional requirements if
a building permit is required for any structures;
markets [which] that display or sell agricultural
products [which] that are not grown on the
premises shall be required to obtain a special
permit pursuant to chapter 205, Hawai'i Revised
Statutes;

5. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

6. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

9. Animal hospitals and animal board facilities; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

10. Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

11. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours [which] that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

12. Except on Moloka'i, bed and breakfast homes permitted under chapter 19.64 of this code that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008;

ii. The lot is comprised of five acres or less; and

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

[12.] 13. Parks for public use, not including golf courses and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds; and

[13.] 14. Other uses [which] that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.

SECTION 4. Chapter 19.64, Maui County Code, is amended to read as follows:

"19.64.010 Purpose and intent. The purpose of this chapter is to establish a permitting process and appropriate restrictions and standards for bed and breakfast homes; to allow small, local businesses an

opportunity to participate and benefit from tourism; to provide a visitor experience and accommodation as an alternative to the resort and hotel accommodations currently existing in the County; and to retain the character of the [residential] neighborhoods in which any bed and breakfast home is located.

19.64.020 Districts in which permitted. Bed and breakfast homes shall be permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

19.64.030 Restrictions and standards. Bed and breakfast homes shall be subject to the following restrictions and standards:

A. The short-term rental use shall be permitted in [only one] no more than two single-family dwelling [unit] units per lot.

B. The owner-proprietor [or lessee-proprietor] shall have a current transient accommodations tax (TAT) license and general excise tax (GET) license for the bed and breakfast home.

C. The owner-proprietor [or lessee-proprietor] shall be a resident of the [county] County and shall reside, on a full-time basis, [within the single-family dwelling unit] on the same lot being used as the bed and breakfast home.

D. The owner-proprietor shall have legal title to the property on which the bed and breakfast home is located[; the lessee-proprietor shall hold a lease of five years or more on the property on which the bed and breakfast home is located].

E. The bed and breakfast home permit shall be in the name of the owner-proprietor, who shall be a natural person and the owner of the real property where the short-term rental use shall be permitted. No bed and breakfast home permit shall be held by a corporation, partnership, limited liability company, or similar entity. The permit shall not be transferable. No more than one permit shall be approved for any lot.

[E.] F. The number of bedrooms used for short-term rental in the bed and breakfast home shall be no greater than six on Lana'i and Maui, and no greater than three on Moloka'i, and shall be subject to the

provisions of section 19.64.050 [of this chapter]. The total number of guests shall be limited to up to two adult guests and up to two minor guests per bedroom.

[F.] G. A bed and breakfast home shall make breakfast available to onsite guests, but shall not operate as a food service establishment[,] (for example, restaurant), unless a food service establishment is a permitted use in the zoning district.

[G.] H. A bed and breakfast home shall be in compliance with all other applicable federal, state, and local laws.

[H.] I. In permitting bed and breakfast homes, the planning director, the planning commissions, and the council shall not consider, nor be bound by, any private conditions, covenants, or restrictions upon the subject parcel. Any such limitations may be enforced against the property owner through appropriate civil action.

[I.] J. All advertising for any bed and breakfast home in a residential district shall include the number of the permit granted to the owner-proprietor [or lessee-proprietor].

[J.] K. Single-station smoke detectors shall be provided in all guest bedrooms.

[K.] L. Single-family dwellings used as bed and breakfast homes shall not qualify for real property tax exemptions pursuant to chapter 3.48[, Maui County Code] of this code.

[L.] M. No bed and breakfast home [in a residential district] shall create any impact greater than those theretofore existing in that [residential] district[.] and shall conform to the character of the neighborhood.

N. Bed and breakfast homes shall be limited to single-family structures existing and constructed as of the date of application for the bed and breakfast permit.

O. Within the Hana community plan area, on Lana'i, and on Moloka'i, a one-square foot sign identifying the bed and breakfast home permit number shall be placed at the front of the property along the main access road. On Lana'i and Moloka'i, the sign shall be attached to an existing structure, such as a

fence. On Moloka'i, the sign shall state the owner-proprietor's telephone number.

P. All guest parking must be off-street. Grasscrete and tandem parking shall be allowed for any required parking stalls.

Q. The proprietor shall post "house policies" within each guest room and shall be responsible for enforcing such policies. The house policies shall include the following provisions:

1. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the bed and breakfast home shall not disturb anyone on a neighboring property.

2. Amplified sound that is audible beyond the property boundaries of the bed and breakfast home is prohibited.

3. Vehicles shall be parked in the designated onsite parking area and shall not be parked on the street overnight.

R. The County shall be restricted in approving permits for bed and breakfast homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hana: 48.

2. Kihei-Makena: 100.

3. Makawao-Pukalani-Kula: 40.

4. Paia-Haiku: 88.

5. Wailuku-Kahului: 36.

6. West Maui: 88.

S. The planning director or planning commission may impose conditions on the granting of a request for a bed and breakfast home if the conditions are reasonably conceived to mitigate the impacts emanating from the proposed land use.

19.64.040 Procedures for application and public notice. A. Prospective proprietors of bed and breakfast homes [in residential districts] shall apply for a permit with the planning director in accordance with the provisions of this chapter. A permit application fee shall be set forth in the annual budget of the County. All permit applications shall include, but not be limited to, the following information:

1. The name, address, and phone number of the applicant, and verification that the applicant is [either] the owner [or lessee] of the lot;

2. The tax map key number of the lot on which the bed and breakfast home is proposed;

3. Certification that the applicant's primary residence is located on the same lot as the single-family dwelling unit to be used as the bed and breakfast home and that the permit will be nontransferable;

4. A site and floor plan identifying the location of parking on the site and the location of [bedroom(s)] any bedrooms to be used for short-term rental[;] and any bedrooms to be used by the owner-proprietor and the owner-proprietor's family;

5. A list of the names and addresses of the owners and lessees of record within a five-hundred-foot distance from the lot on which the proposed bed and breakfast home is to be located; [a certification that the list is the most current list available at the real property tax division of the department of finance of the County at the time of the filing of the application with the planning director;] and a map, drawn to scale, [which] that clearly identifies the lots and the tax map key numbers of the lots identified pursuant to this section; and

6. Additional information as may be requested by the planning director to determine impact and mitigation measures.

B. Notice of Application.

1. All applicants shall, by certified mail, provide a notice of application for a bed and breakfast permit to the owners and lessees of record located within a five-hundred-foot distance from the lot on which the proposed bed and breakfast home is to be located[;].

2. The notice of application shall contain a description of the proposed bed and breakfast home operation, parking on the site, and number of bedrooms to be used for short-term rental, together with a location map identifying the bed

and breakfast lot in relationship to all other lots within a five-hundred-foot distance[;].

3. A project notice sign shall be posted at the front of the property along the main access road. On Lana'i and Maui, the sign shall be sixteen square feet; on Moloka'i, the sign shall be four square feet. The sign shall be clearly visible from the roadway and shall contain information and wording as prescribed by the department of planning. The sign shall be placed five days prior to remitting an application and shall be removed no later than five days after a final decision has been rendered by the planning director or the planning commission.

[3.] 4. The notice of application shall state that the noticed owners and lessees of record may file a written protest against the proposed bed and breakfast home with the planning director, provided that all protests must be postmarked or received within forty-five days of the mailing of the notice of application[;].

[4.] 5. If planning commission review is required, [the applicant shall publish the notice of application, and the location map, at least thirty days prior to the date of the planning commission's public hearing, in a newspaper which is printed and issued at least twice weekly in the county and which is generally circulated throughout the county;] pursuant to section 19.64.050.B, the application shall be subject to the requirements of section 19.510.020 of this code.

[5.] 6. For purposes of this chapter, notice shall be considered validly given if the planning director finds that the applicant has made a good faith effort to comply with the requirements of this subsection.

C. If an application does not meet the legal requirements of this chapter, it shall be denied.

19.64.050 Permit processing. A. [Type 1] Bed and Breakfast Home. Short-term rental of one to [two] six bedrooms on Lana'i or Maui or of one to three bedrooms on Moloka'i in a bed and breakfast home [in

residential districts] shall be permitted by a ["Type 1 Permit".] bed and breakfast home permit.

1. The applicant for a [Type 1 Permit] bed and breakfast home permit shall file an application with the planning director as provided in section 19.64.040 [of this chapter].

2. The planning director shall approve or deny the application pursuant to the requirements of this chapter.

3. The application shall be processed [as a Type 2 Permit,] as provided in subsection [19.64.050.B,] B of this section if any of the following occur:

[(a)] a. [if] If written protests pursuant to [subsection 19.64.040.B.3] section 19.64.040.B.4 [of this chapter] comprise [forty] thirty percent or more of the owners and lessees of record within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed;

[(b)] b. [if] If a variance was obtained to meet the requirements for a [Type 1 Permit,] bed and breakfast home;

[(c)] c. [if] If an existing bed and breakfast home is operating on a lot within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed[.];

d. For bed and breakfast homes located within the Hana community plan area, the number of bedrooms used for short-term rental in the bed and breakfast home shall be greater than three; or

e. For bed and breakfast homes located on Moloka'i and Lana'i, the application is for an initial bed and breakfast home permit.

4. The planning director shall specify in the department's annual report the number of [Type 1 Permit] bed and breakfast home permit applications received and approved.

B. [Type 2 Bed and Breakfast Home. Short-term rental of three to four bedrooms in a bed and breakfast home on lots of seven thousand five hundred

square feet or greater in residential districts shall be permitted by a "Type 2 Permit". If the single-family dwelling to be used as the bed and breakfast home is listed on the State or Federal Register of Historic Places, the application shall be processed as a Type 1 Permit as provided in subsection 19.64.050.A.

1. The applicant for a Type 2 Permit shall file an application with the planning director as provided in section 19.64.040 of this chapter. The planning director shall process and forward the completed application to the appropriate planning commission.

2.] Bed and breakfast home permit applications described in subsection A.3 of this section shall be submitted to [The] the appropriate planning commission. The appropriate commission shall review and either approve or deny the application pursuant to the requirements of this chapter, the effects the proposed use would have on surrounding [residential] uses, and the cumulative impacts within the region and island[. The commission may also require mitigation to reduce any impacts the use may have on surrounding residential uses.]; provided that, the Maui planning commission shall conduct a public hearing prior to approving an application for a bed and breakfast home permit within the Hana community plan area for which the number of bedrooms used for short-term rental in the bed and breakfast home shall be greater than three.

[3. The application shall be processed as a Type 3 Permit, as provided in subsection 19.64.050.C, if any of the following occur: (a) if the commission approves a Type 2 Permit application for which written protests, pursuant to subsection 19.64.040.B.3 of this chapter, comprise forty percent or more of the owners and lessees of record within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed; (b) if the commission approves a Type 2 Permit application for which a variance was obtained; (c) if an existing bed and breakfast home is operating on a lot within a five-hundred-foot distance from the lot on which the bed and breakfast home is proposed.

4. The planning director shall specify in the department's annual report the number of Type 2 Permit applications received and approved.

C. Type 3 Bed and Breakfast Home. Short-term rental of five to six bedrooms in a bed and breakfast home on lots of ten thousand square feet or greater in the residential districts shall be permitted by a "Type 3 Permit". If the single-family dwelling to be used as the bed and breakfast home is listed on the State or Federal Register of Historic Places, the application shall be processed as a Type 2 Permit as provided in subsection 19.64.050.B.

1. Type 3 Permit applications shall be processed in the same manner as Type 2 Permit applications, except that if the appropriate planning commission approves the Type 3 Permit application, the application and related documents shall be referred to the council for final approval by resolution; if the appropriate planning commission denies the Type 3 Permit application, the application shall be denied and shall not be referred to the council.

2. The planning director shall specify in the department's annual report the number of Type 3 Permit applications received and approved.]

19.64.060 Compliance and revocation. A.

[Permits] Initial permits shall be valid for a maximum period of [one-year and may be renewed by the planning director in accordance with criteria then in effect as established for Type 1 Permits by the planning director, Type 2 Permits by the planning commission, or Type 3 Permits by the council.] three years. Shorter periods may be approved to mitigate impacts. Subsequent permit renewals may be granted by the director for terms up to five years on Lana'i and Maui and up to one year on Moloka'i. In reviewing a time extension request, the planning director shall require evidence of compliance with conditions of the bed and breakfast home permit and this chapter. No permit shall be renewed without written verification of tax payments, and no permit shall be renewed [in the event that any evidence has come to the attention of the planning director that] if the operation of the bed and breakfast home has created adverse impacts on the

[residential] neighborhood in which it is situated or has otherwise caused the loss of the character of that [residential] neighborhood. For permits renewed for terms longer than two years, an annual compliance report shall be required.

B. All permits and renewals shall contain a provision for inspection at reasonable times and upon presentation of appropriate credentials.

C. Any permit for a bed and breakfast home shall be revoked at any time by the planning director if the requirements of this chapter or the conditions of approval have not been met.

D. In addition to any enforcement action pursuant to chapter 19.530 of this title, the rules of the appropriate planning commission, and the rules of the department of planning, the permit of the bed and breakfast home shall be revoked[,] and the [proprietor] owner-proprietor may not re-apply for another permit for two years after the date of revocation if it is shown that:

1. The owner-proprietor [or lessee-proprietor] gave false or misleading information during the application process;

2. The owner-proprietor [or lessee-proprietor] is in violation of State Department of Health regulations, or any other applicable laws;

3. The owner-proprietor [or lessee-proprietor] is overdue in payment of State or County taxes, fines, or penalties assessed in relation to the bed and breakfast home; or

[4. There is a change in proprietorship; or

5.] 4. There has been a violation of any of the terms, conditions, and restrictions on the use of the dwelling unit for a bed and breakfast home.

[D.] E. Any operation of a bed and breakfast home [in residential districts] without an appropriate permit shall be in violation of this chapter and subject to the enforcement provisions of chapter 19.530 of this title.

F. No later than January 15 of each calendar year, the department of planning shall transmit to the real property tax division, department of finance, an annual list of all bed and breakfast homes as of

January 1 of that calendar year. The real property tax division shall review its records and determine that none of the bed and breakfast homes has a homeowner's exemption.

SECTION 5. Chapter 19.64, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"19.64.070 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter."

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. A. This ordinance shall take effect upon its approval and shall apply to bed and breakfast home applications deemed complete after March 7, 2008.

B. Any pending application for a conditional permit that meets the definition of a "bed and breakfast home" pursuant to this ordinance may be processed in accordance with Chapter 19.64, Maui County Code.

C. Bed and breakfast home permits in effect as of the effective date of this ordinance shall remain in effect for their duration, and their renewal shall be subject to Chapter

19.64 as it existed prior to the effective date of this ordinance.

D. Any existing conditional permit that meets the definition of a "bed and breakfast home" pursuant to this ordinance may be renewed in accordance with the provisions of Chapter 19.64.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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WE HEREBY CERTIFY that the foregoing BILL NO. 115 (2008)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 19th day of December, 2008, by the following vote:

| | | | | | | | | |
|-------------------------|------------------------------|-------------------|-----------------|-----------------|---------------------|-------------------|-------------------|----------------------|
| G. Riki HOKAMA Chair | Dennis A MATEO Vice-Chair | Michelle ANDERSON | Gladys C. BAISA | Jo Anne JOHNSON | William J. MEDEIROS | Michael J. MOLINA | Joseph PONTANILLA | Michael P. VICTORINO |
| Aye | Aye | Aye | Excused | No | Aye | Aye | Aye | Aye |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 22nd day of December, 2008.

DATED AT WAILUKU, MAUI, HAWAII, this 19th day of December, 2008.

RECEIVED
2009 DEC 22 AM 10:25
OFFICE OF THE MAYOR

G. RIKI HOKAMA, CHAIR
Council of the County of Maui

ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 7th DAY OF JANUARY, 2009.

CHARMAINE TAVARES, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3611 of the County of Maui, State of Hawaii.

ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on December 5, 2008.
Effective date of Ordinance January 7, 2009.

RECEIVED
2009 JAN -7 PM 2:05
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3611, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on
